From: Ken Arromdee
To: Microsoft ATR
Date: 1/27/02 4:19pm
Subject: Microsoft Settlement

As a computer professional and PhD in computer science, I'm writing to express my concern about the revised proposed Final Judgment in the US vs. Microsoft case.

I'm particularly concerned as a user of the Linux operating system. Linux may be the most viable competitor to Windows right now, and any settlement should prevent anticompetitive actions towards Linux. I'm disturbed, however, by the loopholes in the settlement, both with respect to competition with other operating systems in general, and specifically in connection with Linux.

-- In section III.a.2, Microsoft is prohibited from retaliating against OEMs who include both Windows and another OS on their computers. However, the prohibition doesn't include computers shipped with *only* a competing OS. The prohibition should be extended to include such computers.

-- Section III.d requires that Microsoft disclose information to ISVs, IHVs, IAPs, ICPs, and OEMs about middleware APIs. Section III.e requires similar disclosure of communications protocol, and section III.i requires that Microsoft licenses any associated intellectual property. These seemingly reasonable clauses would exclude Linux:

() The reference to ISVs (independent software vendors) would at first seem to let the information be used with Linux. However, Linux is written by volunteers; it's not clear whether the term "ISV" would include a typical Linux developer.

() According to section III.i.3, Microsoft can prohibit sublicensing or transfer of intellectual property rights. The Linux kernel and many other parts of Linux are written under a license (GNU General Public License) which requires that the licensed program be freely modifiable and distributable. Prohibitions on sublicensing/transfer would violate the GPL, preventing Linux from using the information.

() Royalties for licensing the information must be "reasonable and non-discriminatory". Since typical Linux developers are volunteers who don't profit from their code, any "reasonable and non-discriminatory" fee greater than zero would make it impractical to use the information with Linux. Some types of "reasonable and nondiscriminatory" terms may be even worse; for instance, since Linux may be freely copied, a per-copy fee paid by the developer would impose a potentially infinite cost.

() Section III.j.2 permits Microsoft to disclose the information only if the user has a reasonable business need, which wouldn't apply to a Linux developer writing code as a volunteer project. It also lets Microsoft require a third-party compliance test at the user's expense, which is inappropriate for a volunteer making no profit.

() The information can only be used for interoperation with a "Windows Operating System Product". This prohibits many reasonable uses, such as making a non-Windows operating system able to run Windows programs. Also, if the use of the information is restricted, it may be difficult or impossible for a programmer who has seen the information to ever work on Linux, since he would never be able to prove that he isn't using information in a prohibited way.

This problem with the Judgment can only be fixed by not allowing restrictions on distribution or use of the information.

-- Microsoft is not required to release information about file formats, such as in Microsoft Word, and Word is not included in the definition of middleware.

-- The definition of "middleware" is tied to the specific version numbers used, allowing Microsoft to easily get around the judgment simply by changing its numbering scheme.

-- The exemption in III.j.1 for technology necessary for anti-piracy, licensing, and authorization is a very big loophole. For instance, Microsoft could create middleware that only runs applications that have been digitally signed by Microsoft, and then not tell third parties how to create signed applications, allowing Microsoft to control which applications are run.

-- The proposal should also prohibit anti-competitive licenses. Many Microsoft products contain clauses that prohibit running them on non-Windows operating systems. Some specificallyt mention open-source software (which includes Linux). For instance, Microsoft's Mobile Internet Toolkit's EULA contains a prohibition on not using "Potentially Viral Software" (defined as to include open source) tools to develop software that uses the kit.

-- The proposal should prohibit Microsoft from requiring that licensees not publically discuss the product, the license, and/or the license terms.

Kenneth Arromdee
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